

PART 573—COMPLIANCE AND ENFORCEMENT

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AUTHORITY: 25 U.S.C. 2706(b)(10); 25 U.S.C. 2713; E.O. 13175, 65 FR 67249, 3 CFR, 2000 Comp., p.304.

SOURCE: 58 FR 5844, Jan. 22, 1993, unless otherwise noted.

§ 573.1 What is the purpose of this part?

Voluntary compliance is the goal of the Commission. Voluntary compliance is achieved when a tribe and the NIGC staff are able to resolve any potential enforcement issues prior to the Chair issuing an enforcement action. This part sets forth efforts for achieving voluntary compliance and enforcement action when voluntary compliance is not forthcoming. While this part is intended to garner voluntary compliance through a graduated enforcement process, there may be circumstances under which a graduated enforcement process is omitted and an enforcement action must be taken. This part also sets forth general rules governing the Commission's enforcement of the Act, this chapter, and tribal ordinances and resolutions approved by the Chair under part 522 of this chapter. Civil fines in connection with notices of violation issued under this part are addressed in part 575 of this chapter.

[77 FR 47518, Aug. 9, 2012, as amended at 80 FR 31995, June 5, 2015]

§ 573.2 When may a letter of concern be issued?

(a) Prior to the Chair taking an enforcement action, a letter of concern may be provided by NIGC staff, detailing concerns regarding compliance with the Act, this chapter, or any tribal ordinance or resolution approved by the Chair under part 522 of this chapter. A letter of concern describes the available facts and information, includes a preliminary assessment re-

garding the incident or condition, and indicates that it may be a violation.

(b) Action under this section does not constitute agency action.

(c) A letter of concern issued under paragraph (a) of this section must provide a time period for the respondent to respond. If the letter of concern is resolved without enforcement action, NIGC staff may send an investigation completion letter pursuant to § 571.4 of this chapter.

(d) The Chair's discretion to take an enforcement action is not limited or constrained in any way by this section. When the Chair takes enforcement action before a letter of concern is issued, the enforcement action must state the reasons for moving directly to an enforcement action without first issuing a letter of concern.

[77 FR 47519, Aug. 9, 2012, as amended at 78 FR 4324, Jan. 22, 2013; 80 FR 31995, June 5, 2015]

§ 573.3 Notice of violation.

(a) The Chair may issue a notice of violation to any person for violations of any provision of the Act or this chapter, or of any tribal ordinance or resolution approved by the Chair under part 522 of this chapter.

(b) A notice of violation shall contain:

(1) A citation to the federal or tribal requirement that has been or is being violated;

(2) A description of the circumstances surrounding the violation, set forth in common and concise language;

(3) Measures required to correct the violation;

(4) A reasonable time for correction, if the respondent cannot take measures to correct the violation immediately; and

(5) Notice of rights of appeal.

[58 FR 5844, Jan. 22, 1993, as amended at 77 FR 47519, Aug. 9, 2012]

§ 573.4 When may the Chair issue an order of temporary closure?

(a) *When an order of temporary closure may issue.* Simultaneously with or subsequently to the issuance of a notice of violation under § 573.3, the Chair may issue an order of temporary closure of

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all or part of an Indian gaming operation if one or more of the following substantial violations are present:

(1) The respondent fails to correct violations within:

(i) The time permitted in a notice of violation; or

(ii) A reasonable time after a tribe is served with notice of a violation.

(2) A gaming operation fails to pay the annual fee required by 25 CFR part 514.

(3) A gaming operation operates for business without a tribal ordinance or resolution that the Chair has approved under part 522 of this chapter.

(4) A gaming operation operates for business without a license from a tribe, in violation of part 522 or part 559 of this chapter.

(5) A gaming operation operates for business without either background investigations completed for, or tribal licenses granted to, all key employees and primary management officials, as provided in § 558.3(b) of this chapter.

(6) There is clear and convincing evidence that a gaming operation defrauds a tribe.

(7) A management contractor operates for business without a contract that the Chair has approved under part 533 of this chapter.

(8) Any person knowingly submits false or misleading information to the Commission or a tribe in response to any provision of the Act, this chapter, or a tribal ordinance or resolution that the Chair has approved under part 522 of this chapter.

(9) A gaming operation refuses to allow an authorized representative of the Commission or an authorized tribal official to enter or inspect a gaming operation, in violation of § 571.5 or § 571.6 of this chapter, or of a tribal ordinance or resolution approved by the Chair under part 522 of this chapter.

(10) A tribe fails to suspend a license upon notification by the Commission that a primary management official or key employee does not meet the standards for employment contained in § 556.5 of this chapter, in violation of § 558.4 of this chapter.

(11) A gaming operation operates class III games in the absence of a tribal-state compact that is in effect, in violation of 25 U.S.C. 2710(d).

(12) A gaming operation's facility is constructed, maintained, or operated in a manner that threatens the environment or the public health and safety, in violation of a tribal ordinance or resolution approved by the Chair under part 522 of this chapter.

(13) A gaming facility operates on Indian lands not eligible for gaming under the Indian Gaming Regulatory Act.

(b) *Order effective upon service.* The operator of an Indian gaming operation shall close the operation upon service of an order of temporary closure, unless the order provides otherwise.

(c) *Informal expedited review.* Within seven (7) days after service of an order of temporary closure, the respondent may request, orally or in writing, informal expedited review by the Chair.

(1) The Chair shall complete the expedited review provided for by this paragraph within two (2) days after his or her receipt of a timely request.

(2) The Chair shall, within two (2) days after the expedited review provided for by this paragraph:

(i) Decide whether to continue an order of temporary closure; and

(ii) Provide the respondent with an explanation of the basis for the decision.

(3) Whether or not a respondent seeks informal expedited review under this paragraph, within thirty (30) days after the Chair serves an order of temporary closure the respondent may appeal the order to the Commission under part 584 or part 585 of this chapter. Otherwise, the order shall remain in effect unless rescinded by the Chair for good cause.

[58 FR 5844, Jan. 22, 1993, as amended at 73 FR 6030, Feb. 1, 2008; 74 FR 36940, July 27, 2009. Redesignated and amended at 77 FR 47519, Aug. 9, 2012; 78 FR 4324, Jan. 22, 2013; 80 FR 31995, June 5, 2015]

§ 573.5 When does an enforcement action become final agency action?

An enforcement action shall become final agency action and a final order of the Commission when:

(a) A respondent fails to appeal the enforcement action as provided for in subchapter H of this chapter and does not enter into a settlement agreement resolving the matter in its entirety; or

(b) A respondent enters into a settlement agreement resolving the matter in its entirety at any time after the issuance of the enforcement action.

[77 FR 47519, Aug. 9, 2012, as amended at 78 FR 4324, Jan. 22, 2013]

PART 574 [RESERVED]

PART 575—CIVIL FINES

Sec.

575.1 Scope.

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575.4 When civil fine will be assessed.

575.5 Procedures for assessment of civil fines.

575.6 Settlement, reduction, or waiver of civil fine.

575.7 Final assessment.

AUTHORITY: 25 U.S.C. 2705(a), 2706, 2713, 2715.

SOURCE: 58 FR 5844, Jan. 22, 1993, unless otherwise noted.

§ 575.1 Scope.

This part addresses the assessment of civil fines under section 2713(a) of the Act with respect to notices of violation issued under § 573.3 of this chapter.

§ 575.3 How assessments are made.

The Chairman shall review each notice of violation and order of temporary closure in accordance with § 575.4 of this part to determine whether a civil fine will be assessed, the amount of the fine, and, in the case of continuing violations, whether each daily illegal act or omission will be deemed a separate violation for purposes of the total civil fine assessed.

§ 575.4 When civil fine will be assessed.

The Chairman may assess a civil fine, not to exceed \$25,000 per violation, against a tribe, management contractor, or individual operating Indian gaming for each notice of violation issued under § 573.3 of this chapter after considering the following factors:

(a) *Economic benefit of noncompliance.* The Chairman shall consider the extent to which the respondent obtained an economic benefit from the noncompliance that gave rise to a notice of violation, as well as the likelihood of escaping detection.

(1) The Chairman may consider the documented benefits derived from the noncompliance, or may rely on reasonable assumptions regarding such benefits.

(2) If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation.

(b) *Seriousness of the violation.* The Chairman may adjust the amount of a civil fine to reflect the seriousness of the violation. In doing so, the Chairman shall consider the extent to which the violation threatens the integrity of Indian gaming.

(c) *History of violations.* The Chairman may adjust a civil fine by an amount that reflects the respondent's history of violations over the preceding five (5) years.

(1) A violation cited by the Chairman shall not be considered unless the associated notice of violation is the subject of a final order of the Commission and has not been vacated; and

(2) Each violation shall be considered whether or not it led to a civil fine.

(d) *Negligence or willfulness.* The Chairman may adjust the amount of a civil fine based on the degree of fault of the respondent in causing or failing to correct the violation, either through act or omission.

(e) *Good faith.* The Chairman may reduce the amount of a civil fine based on the degree of good faith of the respondent in attempting to achieve rapid compliance after notification of the violation.

§ 575.5 Procedures for assessment of civil fines.

(a) Within 15 days after service of a notice of violation, or such longer period as the Chairman may grant for good cause, the respondent may submit written information about the violation to the Chairman. The Chairman shall consider any information so submitted in determining the facts surrounding the violation and the amount of the civil fine.

(b) The Chairman shall serve a copy of the proposed assessment on the respondent within thirty (30) days after the notice of violation was issued, when practicable.